

FILED

530

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

JAN 28 AM 10:57

Name Durr Dewane K
(Last) (First) (Initial)Prisoner Number P-12787Institutional Address F-2-B-136 UP P.O.Box 5244Corcoran, California 93212UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIADewane Kent Durr

(Enter the full name of plaintiff in this action.)

vs.

Ken Clerk (Warden)Edmand G. Brown Jr.(Attorney General)

(Enter the full name of respondent(s) or jailor in this action)

Case No. _____
(To be provided by the clerk of court) **WHA****PETITION FOR A WRIT
OF HABEAS CORPUS****(PR)**Read Comments Carefully Before Filling InWhen and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

- (a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

Lancaster Superior CourtLos Angeles

Court

Location

- (b) Case number, if known MA-029593

- (c) Date and terms of sentence June 20, 2005 Tern six year's

- (d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes X No

Where?

Name of Institution: Corcoram S.A.T.FAddress: P.O.Box 5244 Corcoran CA, 93212

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

EX-Felon Possession of a Firearm with a Prior Strike, Penal Code
12021(A)(1), 667.5(B) and 1170(B).

3. Did you have any of the following?

Arrestment: Yes X No

Preliminary Hearing: Yes _____ No X

Motion to Suppress: Yes _____ No X

4. How did you plead?

Guilty X Not Guilty _____ Nolo Contendere _____

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury _____ Judge alone _____ Judge alone on a transcript _____

6. Did you testify at your trial? Yes _____ No x

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No

(b) Preliminary hearing Yes _____ No X

(c) Time of plea Yes X No _____

(d) Trial Yes_____ No X

(e) Sentencing Yes X No _____

(f) Appeal Yes _____ No **X**

(g) Other post-conviction proceeding Yes _____ No **X**

8. Did you appeal your conviction? Yes X No

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes X No _____

Year: 2006 Result: Denied

Supreme Court of California Yes X No

Year: 2007 Result: Denied

Any other court Yes _____ No X

Year: _____ Result: _____

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes X No

(c) Was there an opinion? Yes No X

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes No X

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes No X

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

II. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

1 a. _____

2 b. _____

3 c. _____

4 d. _____

5 Result: _____ Date of Result: _____

6 III. Name of Court: _____

7 Type of Proceeding: _____

8 Grounds raised (Be brief but specific):

9 a. _____

10 b. _____

11 c. _____

12 d. _____

13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____

18 b. _____

19 c. _____

20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No X

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to

27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: The trial court exceeded it's jurisdiction by
6 imposing upper term of six years.(Please see attached sheet.)

7 Supporting Facts: On June 20,2005 Petitioner enter a plea of
8 guilty for ex-felon possession of a firearm with a prior
9 strike.The courts chose the upper term.In doing so violate's
10 petitioner's right to jury trial on any fact the law made (please see Att)

11 Claim Two: The trial court used the same prior three times.

12
13 Supporting Facts: On June 20,2005 Petitioner was sentece and
14 the court used the same prior three times.One as an element
15 of the crime,two as a strike to double the sentence,and
16 three to impose the upper-term.

17 Claim Three: N/A

18
19 Supporting Facts: N/A

20
21
22
23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 N/A

1 CONTINUE CLAIM ONE:In doni so violate's petitioner's sixth and fourteenth
2 amendments

3 CONTINUE SUPPORTING FACT NUMBER ONE:essential to the punishment,and the
4 judge exceed the proper authority.

5 "
6 "
7 "
8 "
9 "
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15 "
16 "
17 "
18 "
19 "
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23 "
24 "
25 "
26 "
27 "

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 Cunningham VS. California, 05-655/and people VS. Jones (1993) 5Cal.4TH
5 1142.

6
7 Do you have an attorney for this petition? Yes _____ No X

8 If you do, give the name and address of your attorney:
9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on

1-16-08

14 Date

Dwayne D...

Signature of Petitioner

15
16
17
18
19
20 (Rev. 6/02)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL - SECOND DIST.

F I L E D

DIVISION EIGHT

APR - 5 2006

In re

DEAWNE KENT DURR

on Habeas Corpus.

JOSEPH A. LANE Clerk

B189867

C. HON

Deputy Clerk


(Super. Ct. No. MA029593)

(Thomas R. White, Judge)


ORDER

THE COURT*:

We have read and considered the petition for writ of habeas corpus filed on March 24, 2006. The petition is denied.


* RUBIN, Acting P.J.,


BOLAND, J.,


FLIER, J.

S149441

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re DEWANE KENT DURR on Habeas Corpus

The petition for writ of habeas corpus is denied.

**SUPREME COURT
FILED**

NOV 28 2007

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

PROOF OF SERVICE

I, Dewane Kent Durr, CERTIFY AND DECLARE THAT I AM OVER THE AGE OF (18) YEARS, A PARTY TO THE WITHIN ACTION AND A CITIZEN AND OR RESIDENT OF THE UNITED STATES.

I SERVED THE FOLLOWING DOCUMENT(S), Petition for Writ of Habeas Corpus UPON THE PARTIES LISTED BELOW BY PLACING SEALED ENVELOPES IN THE UNITED STATES MAIL HERE AT F-2-B136^{4P} P.O. Box 5244 Corcoran, CALIFORNIA AS FOLLOWS:

Clerk of the United States District Court for the
Northern District of California
450 Golden AV.
P.O. Box 36060
San Francisco Ca. 94102

I, Dewane Kent Durr, SWEAR UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED AND DATED THIS 1 DAY OF 16, 20 08

Dewane Durr
DECLARANT